

NOSB Handling Committee Recommendation
Listing of Certifying Agent's name on Packaged Product
Final – February 07, 2005

Introduction

The USDA National Organic Program (NOP) has requested the NOSB to provide recommended guidance concerning an issue related to the listing of a Certifying Agent's name on a packaged product. The NOP can review and distribute this recommendation to accredited certifying agents and post on the NOP website.

Background

The following scenario has been presented to the National Organic Program (NOP) for clarification:

A retail establishment has been voluntarily certified by an USDA accredited certifying agent (ACA), "Certifier X," to sell organic products. The certified retail establishment contracts with a certified organic handling operation, certified by "Certifier Y," to manufacture organic products for distribution by the retail establishment. The organic products that are produced by the contracted handling operation are also packaged and labeled by the handling operation. However, the labels used to label the packaged products are supplied to the contracted handling operation by the certified retail establishment. The certified retail establishment does not perform any processing function for this product during its manufacture.

Specific Questions

Sections 205.303 (b) (2) and 205.304 (b) (2) of the NOP regulations state that "On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, "Certified organic by....," or similar phrase, **identify the name of the certifying agent that certified the handler of the finished product**: Except, That, the business address, Internet address, or telephone number of the certifying agent may be included in such label."

1. Based on the scenario presented and the requirements contained in the NOP regulations, which ACA is "required" to be identified on the label of the packaged product, "Certifier X" or "Certifier Y?" Please provide your rationale.
2. Can a final retail establishment that does not process agricultural products be considered a handler under the definition of "handler" contained in the NOP regulations? Please provide your rationale.
3. Can a final retail establishment that does not process agricultural products be certified as an organic handler under the NOP regulations?

Recommendation

Response to Question 1

Certifier Y is "required" to be identified on the label of the packaged product. According to sections 205.303(b)(2) and 205.304(b)(2), the ACA that certified the "**handler**" who

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processed and packaged the product must be identified on the ingredient statement. In this example scenario the “certified retail establishment does not perform any processing function for this product during its manufacture”.

There is nothing in the regulation that prevents Certifier X from also being identified as the certifier of the retail operation.

Also, there could be a situation in which the retail establishment could be certified as an organic handler if they satisfied the definition for processing under 205.2 “Processing. Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing in a food container”.

Response to Question 2

No, retail establishments that do not process agricultural products are not considered “**handlers**” under the NOP. Section 205.2 defines “**handler**” as “any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.”

Response to Question 3

No, retail establishments that do not process agricultural products are not considered “**handlers**” under the NOP. Section 205.2 defines “**handler**” as “any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.”

However, the regulation does not prohibit exempt operations, including small farms, small handlers, or retail establishments, from being certified as operating in compliance with all applicable provisions of the regulation.

Committee Vote:

Yes – 4

No – 1

Abstain – 0

Minority Opinion

Clearly the regulation provides for an exemption to retail operations, but the question remains “what is a retail operation?” The background scenario contends,

“The certified retail establishment does not perform any processing function for this product during its manufacture.”

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Yet, it also states:

“The certified retail establishment contracts with a certified organic handling operation,” and, “the labels used to label the packaged products are supplied to the contracted handling operation by the certified retail establishment.”

This may present a conflict in the scenario. The second set of statements may establish the retailer as also a handler. Being that the retailer is employing by contract a processing plant to produce a product, they may be participating in the business of manufacturing. Some retailers may even go to the extent of determining the source of raw ingredients or specifying production processes. The definition for processor includes the terms: “...otherwise manufacturing, and includes the packaging,...”. A definition must be established to clearly show at what point a retailer becomes a manufacturer. Does the physical act of making and packaging a product deem the operation a manufacturer? Or, is the coordination of ingredients, hiring of the contractor used in the process, and/or the designation of the label function of the manufacturing process? It is reasonable that other government agencies may have some established guidelines on the responsible manufacturer in these complex processing schemes. It is suggested that this definition be researched for other regulatory precedence.

However, there are situations where a contact facility is simply producing a product is specification for a retailer. In these situations, there is no direct involvement of the retailer on the processing of the product. The retailer is simply purchasing a product and reselling it. This is strictly a “retail” function.

The regulation does allow for the voluntary certification of retail operations. (preamble 80552) By taking the responsibility as the “final handler” in product in which the retailer has extended responsibility past “retailer”, the retailer maintains all the requirements of the regulation and ensures that full traceability is available. Since the retailer is the final certified entity in the chain and thereby has taken full responsibility for the requirements under the regulation, should they not be able to represent that certification on the product label?